THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES

FOR CITATIONS ISSUED ON OR AFTER

August 1, 2003

THIRD JUDICIAL DISTRICT 515 W. Moreland Blvd. Waukesha, WI 53188-2428 (262) 548-7210

HON. KATHRYN W. FOSTER Chief Judge

MICHAEL G. NEIMON District Court Administrator

DISTRICT OAWI SENTENCING GUIDELINES COMMITTEE:

HON. JOHN M. ULLSVIK, Jefferson Co.

HON. DAVID C. RESHESKE, Washington Co.

HON. PATRICK HAUGHNEY, Waukesha Co.

HON. TOM R. WOLFGRAM, Ozaukee Co., Chairperson

Modifications: Per 2003 Act 30 the following changes have been made to the District 3 guidelines:

- Court Support Services Fee was raised from \$52 to \$68 (affects 1st offenses)
- Crime Lab. And Drug Assessment went up from \$5 to \$7
- The word forfeiture for 2nd 5th offenses was changed to "fine".

SENTENCE OPTIONS/ALTERNATIVES

Alcohol Assessment and Driver Safety Plan. (All offenses)

- Court may order the safety plan to include effect on any victim or victim's family. (All offenses)
- Court may order community service work that demonstrates adverse effects of abuse (and a reasonable fee).
 (All offenses)
- Court may order a visit to a site that demonstrates adverse effects of abuse (and a reasonable fee). (All offenses)
- Court must order community service to pay off fine, if a finding is made that there is an inability to pay.
- Court may also order restitution. (All offenses)
- Court <u>may</u>, after a finding of inability to pay, reduce the costs or forfeiture and order the person to pay the difference toward the cost of the alcohol assessment and driver safety plan. (All offenses)

IMMOBILIZATION OR IGNITION INTERLOCK OF OWNED VEHICLE 2nd offense or greater

(Unless undue hardship, extreme inconvenience or endangerment of person's health and safety)

Court <u>may</u> order a motor vehicle owned and operated by a violator to be seized and forfeited. (3rd offense and above only)

MITIGATING AND AGGRAVATING FACTORS IN SENTENCING

MITIGATING FACTORS:

- *Age of prior OAWI/BAC Offense/Conviction
- *Pre-Conviction Assessment and Treatment
- *Good Driving Record
- *Minimal Poor Driving
- *Cooperation With Authorities
- *Positive Attitude/Steps Toward Problem Recognition
- *Blood Test Taken with Refusal

AGGRAVATING FACTORS:

- *Poor Driving
- *Accident or Injury Involved
- *Poor Prior Driving Record
- *Recent Prior OAWI/BAC Offense/Conviction
- *Operating Without Valid Driving Privileges (i.e. OAR, OAS, OWL, HTO)
- *Circumstances of Consumption (Binge Drinking, Amount Consumed, Medication Use, etc.)
- *Poor/Limited Problem Recognition as Evidenced by Prior Treatment History or Lack Thereof
- *Uncooperative/Belligerent/Violent Toward Arresting Officer
- *Prior Uncounted Offenses for OAWI/BAC
- *Lack of Remorse
- *For 3rd Plus Offenses: Previously Uncounted Offenses from January 1, 1988, per

(1993 Wisconsin Act 317, Effective April 30, 1994)

Third Judicial District

FIRST OFFENSE

Mitigating Factors

Bac Level				
	.10 to .149	.15 to .199	.20 to .249	.25 and above
				or refusal
Forfeiture	150.00	200.00	250.00	250.00
Penalty Assessment (24%)	36.00	48.00	60.00	60.00
Jail Assessment	10.00	10.00	10.00	10.00
Justice Information Service Fee	9.00	9.00	9.00	9.00
Court Support Services Fee	68.00	68.00	68.00	68.00
Court Costs	25.00	25.00	25.00	25.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial	\$660.00	\$722.00	\$784.00	\$784.00
Revocation	6 months	7 months	8 months	9 months

Bac Level				
	.10 to .149	.15 to .199	.20 to .249	.25 and above
				or refusal
Forfeiture	200.00	250.00	300.00	300.00
Penalty Assessment (24%)	48.00	60.00	72.00	72.00
Jail Assessment	10.00	10.00	10.00	10.00
Justice Information Service Fee	9.00	9.00	9.00	9.00
Court Support Services Fee	68.00	68.00	68.00	68.00
Court Costs	25.00	25.00	25.00	25.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial	\$722.00	\$784.00	\$846.00	\$846.00
Revocation	7 months	8 months	9 months	9 months

Third Judicial District

SECOND OFFENSE

Mitigating Factors

Bac Level	.10 to .149	.15 to .199	.20 to .249	.25 and above
Fine	350.00	400.00	450.00	
Penalty Assessment (24%)	84.00			
Jail Assessment	10.00			
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial	\$876.00	\$938.00	\$1,000.00	\$1,062.00
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Jail	5-30 days	10-60 days	20-90 days	90-180 days
Revocation	12 months	14 months	16 months	18 months

Bac Level				
	.10 to .149	.15 to .199	.20 to .249	.25 and above
				or refusal
Fine	400.00	450.00	500.00	550.00
Penalty Assessment (24%)	96.00	108.00	120.00	132.00
Jail Assessment	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial	\$938.00	\$1,000.00	\$1,062.00	\$1,124.00
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Jail	30-60 days	60-90 days	90-180 days	120-180 days
Revocation	14 months	16 months	18 months	18 months

Third Judicial District

THIRD OFFENSE

Mitigating Factors

Bac Level				
	.08 to .169	.17 to .199	.20 to .249	.25 and above
				or refusal
Fine	600.00	1200.00	1800.00	2400.00
Penalty Assessment (24%)	144.00	288.00	432.00	576.00
Jail Assessment	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial	\$1,186.00	\$1,930.00	\$2,674.00	\$3,418.00
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Jail	30 days -5 months	45 days - 6 months	3-7 months	4-9 months
Revocation	24 months	27 months	30 months	33 months

Bac Level				
	.08 to .169	.17 to .199	.20 to .249	.25 and above
				or refusal
Fine	650.00	1300.00	1950.00	2600.00
Penalty Assessment (24%)	156.00	312.00	468.00	624.00
Jail Assessment	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial	\$1,248.00	\$2,054.00	\$2,860.00	\$3,666.00
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Jail	45 days -6 months	4-8 months	7 mo1 yr.	9 mo1 yr.
Revocation	27 months	30 months	33 months	36 months

Third Judicial District

FOURTH OFFENSE

Mitigating Factors

Bac Level					
	.02 to .08	.08169	.17199	.20 to .249	.25 and above
					or refusal
Fine	650.00	750.00	1500.00	2250.00	3000.00
Penalty Assessment (24%)	156.00	180.00	360.00	540.00	720.00
Jail Assessment	10.00	10.00	15.00	22.50	30.00
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00	7.00
Total Financial	\$1,248.00	\$1,372.00	\$2,307.00	\$3,244.50	\$4,182.00
Jail	2 mo1yr.	3 mo1yr.	4 mo1yr.	6 mo1yr.	7 mo1yr.
Revocation	24 months	24 months	27 months	33 months	36 months

Bac Level	.02 to .08	.08169	.17199	.20 to .249	.25 and above or refusal
Fine	900.00	1000.00	2000.00	3000.00	4000.00
Penalty Assessment (24%)	216.00	240.00	480.00	720.00	960.00
Jail Assessment	10.00	10.00	20.00	30.00	40.00
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00	7.00
Total Financial	\$1,558.00	\$1,682.00	\$2,932.00	\$4,182.00	\$5,432.00
Jail	5 mo1yr.	7 mo1yr.	9 mo1yr.	10 mo1yr.	10 mo1yr.
Revocation	27 months	33 months	36 months	36 months	36 months

^{*}Note: probation is now an option for both 4th and 5th offenses

Third Judicial District

FIFTH OR SUBSEQUENT OFFENSE

Mitigating Factors

Bac Level					
	.02 to .08	.08169	.17199	.20 to .249	.25 and above
					or refusal
Fine	1200.00	1500.00	3000.00	4500.00	6000.00
Penalty Assessment (24%)	288.00	360.00	720.00	1080.00	1440.00
Jail Assessment	12.00	15.00	30.00	45.00	60.00
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00	7.00
Total Financial	\$1,932.00	\$2,307.00	\$4,182.00	\$6,057.00	\$7,932.00
Jail	6 months -5 yrs	1-5 yrs	1-5 yrs	1-5 yrs	1-5 yrs
Revocation	36 months	36 months	36 months	36 months	36 months

^{*} If sentence is greater than 12 months (i.e. Prison sentence) then a bifurcated sentence is mandatory and extended supervision must not be less than 25 percent of the overall sentence.

Bac Level					
	.02 to .08	.08169	.17199	.20 to .249	.25 and above
					or refusal
Fine	1500.00	1700.00	3400.00	5100.00	6800.00
Penalty Assessment (24%)	360.00	408.00	816.00	1224.00	1632.00
Jail Assessment	15.00	17.00	34.00	51.00	68.00
Victim-Witness Surcharge A	30.00	30.00	30.00	30.00	30.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00	7.00
Total Financial	\$2,307.00	\$2,557.00	\$4,682.00	\$6,807.00	\$8,932.00
Jail	1-5 yrs	1-5 yrs	1-5 yrs	2-5 yrs	2-5 yrs
Revocation	36 months	36 months	36 months	36 months	36 months

^{*} If sentence is greater than 12 months (i.e. Prison sentence) then a bifurcated sentence is mandatory and extended supervision must not be less than 25 percent of the overall sentence.

Third Judicial District

PENALTY RANGES PER STATUTE

	1st Offense	2nd Offense	3rd Offense	4th Offense	5th Offense
Fine or Forfeiture	\$150 - 300	\$350 - 1100	\$600 - 8000	\$600 – 8000	\$600 - 8000
Penalty Assessment	24%	24%	24%	24%	24%
Jail Assessment	\$10	\$10	1% (\$10 min)	1% (\$10 min)	1% (\$10 min)
Justice Information Service Fee	\$9	none	none	None	none
Court Support Services Fee	\$68	none	none	None	none
Victim-Witness Surcharge A	None	\$30	\$30	\$30	\$30
Victim-Witness Surcharge B	None	\$20	\$20	\$20	\$20
Court Costs	\$25	\$20	\$20	\$20	\$20
Driver Improvement Surcharge	\$355	\$355	\$355	\$355	\$355
Crime Lab.& Drug Assessment	\$7	\$7	\$7	\$7	\$7
Jail Sentence	none	5 days to 6 mos.*	30 days to 1 yr*	60 days to 1 yr*	6 mos. to 5 yrs*
Revocation	6-9 months	12-18 months	24-36 months	24-36 months	24-36 months
(No Refusal) Waiting period for occupational license	none	60 days**	90 days**	90 days**	90 days**
(Refusal) Waiting period for occupational license	30 days	90 days**	120 days**	120 days**	120 days**

^{**}Must complete Alcohol Assessment and be in compliance with drivers safety plan and absolute sobriety during use. See also Section 351.07; application following HTO status.

Third Judicial District

MUNICIPAL COURT FIRST OFFENSE

Mitigating Factors

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Bac Level				
	.10 to .149	.15 to .199	.20 + above	Refusal
Forfeiture	150.00	200.00	250.00	250.00
Penalty Assessment (24%)	36.00	48.00	60.00	60.00
Jail Assessment	10.00	10.00	10.00	10.00
Court Costs*	\$15 - \$23	\$15 - \$23	\$15 - \$23	\$15 - \$23
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial From	\$573.00	\$635.00	\$697.00	\$697.00
Factoring Court Costs To	\$581.00	\$643.00	\$705.00	\$705.00
Suspension	6 months	7 months	8 months	9 months

^{*} Municipal Court Costs can be established at a rate ranging from \$15 to \$23 if enacted by the municipality.

Aggravating Factors

Bac Level				
	.10 to .149	.15 to .199	.20 + above	Refusal
Forfeiture	200.00	250.00	300.00	300.00
Penalty Assessment (24%)	48.00	60.00	72.00	72.00
Jail Assessment	10.00	10.00	10.00	10.00
Court Costs*	\$15 - \$23	\$15 - \$23	\$15 - \$23	\$15 - \$23
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Assessment	7.00	7.00	7.00	7.00
Total Financial From	n \$635.00	\$697.00	\$759.00	\$759.00
Factoring Court Costs T	o \$643.00	\$705.00	\$767.00	\$767.00
Suspension	6 months	7 months	8 months	9 months

^{*} Municipal Court Costs can be established at a rate ranging from \$15 to \$23 if enacted by the municipality.

MUNICIPAL COURT 1ST